

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

INTERLOCAL AGREEMENT

AMONG

CITY OF DURHAM,

RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY,

AND

TOWN OF CHAPEL HILL

FOR

THE PROCUREMENT OF BUSES, BUS EQUIPMENT AND PARTS

This Interlocal Agreement (“Agreement”) is dated, made, and entered into this ____ day of _____, 2015, by and between the CITY OF DURHAM, a North Carolina municipal corporation (the “Lead Agency”), the TOWN OF CHAPEL HILL, a North Carolina municipal corporation, (the “Town”) and RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY d/b/a TRIANGLE TRANSIT (“Triangle Transit”), a regional public transportation authority created pursuant to N.C.G.S. Chapter 160A, Article 26 (the Town and Triangle Transit each sometimes being referred to herein as “Purchasing Entity” or “Purchasing Entities”).

WITNESSETH:

WHEREAS, the Lead Agency, the Town, and Triangle Transit (collectively or singularly referred to herein as the “Parties” or the “Party”) each have responsibilities for providing quality transportation services for portions of their respective populations; and

WHEREAS, in order to fulfill this common mission, each of the Parties to this Agreement must acquire a fleet of buses and the parts and equipment necessary to maintain those vehicles and keep them in service; and

WHEREAS, in light of their physical proximity, close working relationship and common service interests, the Parties agree that the acquisition of buses, parts and equipment to provide said service could be more effectively and efficiently provided through an Interlocal Agreement and the assignment of certain procurement responsibilities to the Lead Agency on behalf of the all Parties.

NOW, THEREFORE, for and in consideration of the promises and covenants contained in this Agreement and the mutual benefits derived therefrom, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Purpose of Agreement. This is an Interlocal Agreement pursuant to N.C.G.S. Chapter 160A, Article 20. The City of Durham will serve as the Lead Agency. The undertaking authorized by this Agreement is the contractual exercise by the Lead Agency, on behalf of all three units, for the issuance of an Invitation for Bids to solicit bidding for acquisition of buses, bus equipment and parts (the “Goods”), with the understanding that the final decisions on the acceptance of bids and the purchase of said vehicles and equipment rests with each individual Party.

Section 2. Procedure.

(a) **Pre-solicitation Requirement.** The Lead Agency will provide the Independent Cost Estimate (ICE) to each Purchasing Entity for its review and approval to ensure compliance with federal requirements prior to advertising the Invitation for Bid. Upon approval by all Parties, the Lead Agency will maintain the ICE in its procurement file with the solicitation documents.

(b) **Solicitation Process.** The Lead Agency will, according to this Agreement and the resulting solicitation documents jointly developed and agreed upon by the Parties, receive from each Purchasing Entity specifications for the Goods and a detailed schedule of Goods by contract year that each Purchasing Entity is interested in purchasing during the life of its contract with the successful bidder.

The Lead Agency will solicit competitive bids for the Goods in accordance with State of North Carolina General Statute §143-129, 49 CFR Part 18.36 (the Common Rule), and Federal Transit Administration (FTA) Circular 4420.1F (Third Party Contracting Guidance). The solicitation process will allow any of the Parties to exercise its right to purchase said Goods based on its stated needs for the base and option years, as appended to this and any other agreements related to this procurement action. The Lead Agency will use its usual procedures for such solicitations, as long as they comply with the rules cited above and the Purchasing Entities’ usual procedures. The Parties agree that the Lead Agency may use internet advertising pursuant to its own procedures and may forgo requiring bid bonds and performance bonds. If any of the Purchasing Entities require different procurement, solicitation and/or advertising procedures (“Special Requirements”), the Lead Agency agrees to accommodate such needs so long as the requesting Purchasing Entity provides, in writing, sufficient advanced notification of the Special Requirements to the Lead Agency. The requesting Purchasing Entity shall be responsible for the cost associated with any Special Requirements.

The Lead Agency shall make all solicitation and bid documents, including but not limited to, the ICE, the Invitation for Bid, all bids received, all required bid certifications, the bid evaluation, bidder responsiveness and responsibility checks, confirmation from the System for Award Management of non-debarment of the selected bidder and the summary of the solicitation and selection results available to the Purchasing Entities. Before accepting the bid of the apparent lowest, responsive and responsible bidder, the Lead Agency will provide a reasonable period of time for the Purchasing Entities’ review and approval of a FTA-compliant price analysis it performed on all quantities of Goods for base and option years and equipment options.

(c) **Lists of Goods to be Solicited.** The Lead Agency, in cooperation with, and using information supplied by the Purchasing Entities, will compile the reasonably foreseeable needs of each Party in an estimated schedule of purchases for the base year and four option years. This schedule will be approved jointly by the Parties before the solicitation documents are advertised. Each Party will have at its sole discretion the right to exercise any or all of its options in the bid documents and each Party’s resulting contract at a schedule most beneficial to its needs and determine whether any of its contract options will be assignable, including assignment to any Party to this agreement. Each Party shall be solely responsible for preparing its own contracts to be included in the solicitation documents and any final contracts and purchase orders it executes to purchase from the selected lowest responsible, responsive bidder.

The solicitation documents and each Party’s resulting contract will specify that each purchase of Goods resulting from the successful bid will be done as purchase orders or contracts prepared by each

Party and faithfully executed by each Party. The solicitation documents and each Party's resulting contract or purchase order will specify that the purchase order or contract resulting from this bidding process will remain open as requested by the Party but limited to a base year and no more than four option years during which Party may enter into purchase orders or contracts with the successful bidder for Goods.

(d) Specific Contracts to Purchase. When a Party desires to purchase Goods solicited and contracted for under these procedures, the Party will enter into a purchase directly with the successful bidder and not with another Party (including the Lead Agency).

(e) The Lead Agency does not warrant, represent, or covenant that these procedures will be successful or effective. The Lead Agency shall make a good faith effort to comply with all of the requirements of subsection (b) above. In case the joint procurement is unsuccessful, the Purchasing Entities will be entitled to receive and use all documents and other materials developed and used for this purchasing effort in any manner they desire.

(f) Only the Parties to this Agreement shall participate in the Invitation for Bids and all other entities are precluded from participation.

Section 3. Cost of Solicitation and Purchase. Each Party shall assume all costs associated with the selection, award and purchase of any Goods by the respective Party, including any request for Special Requirements, and shall not be responsible or liable for the costs of tasks performed by the other Parties.

Section 4. Notice. (a) All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows:

City of Durham:

(for purchasing procedural related matters)

Financial Operations Manager

Department of Finance

City of Durham

101 City Hall Plaza

Durham, NC 27705-3329

Phone: 919.560.4455, ext. 18222

Fax: 919.560.1151

Email: Susan.Sandhoff@durhamnc.gov

Research Triangle Regional Public Transportation Authority:

David King, General Manager

PO Box 13787

Research Triangle Park, NC 27709

Phone: 919.485.7424

Fax: 919.485.7441

Email: dking@triangletransit.org

Town of Chapel Hill:
Brian Litchfield, Director of Transit
Transit Department, Town of Chapel Hill
415 Martin Luther King Jr. Blvd.
Chapel Hill, NC 27516
Phone: 919.969.4908
Fax: 919.969.
Email: blitchfield@townofchapelhill.org

The Parties are requested to send a copy by email.

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by any Party by notice given to the other Parties. Any notice or other communication under this Agreement shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail received through UPS, or Federal Express, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Section 5. Miscellaneous.

(a) Duration. This Agreement shall terminate at 5:00 PM on December 31, 2021. The governing body of each Party has determined that duration to be reasonable. A Purchasing Entity may withdraw at any time without affecting the validity of this Agreement for the remaining Parties. The Lead Agency may withdraw upon 30 days' notice to each Purchasing Entity that has not withdrawn. On such termination or withdrawal, all obligations that are still executory on both sides are discharged except for that right based on prior breach or performance survives.

(b) Appointment of Personnel. The City Manager of the City of Durham shall designate persons to carry out its obligations under this Agreement. The Town Manager of the Town of Chapel Hill shall designate persons to carry out its obligations under this Agreement. The General Manager of Triangle Transit shall designate persons to carry out its obligations under this Agreement.

(c) Amendment and Termination. This Agreement may be amended, extended or terminated by agreement of the Parties.

(d) Benefit of Agreement. This Agreement is only for the benefit of the Parties hereto and not for any other person, firm, or corporation.

(e) Governing Law and Forum. This Agreement shall be construed and interpreted in accordance with the laws of North Carolina. This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County.

(f) Severability. If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

(g) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

Section 6. Ethics. The Parties acknowledge and shall adhere to the requirements of N.C.G.S. §133-32.

This Agreement has been executed by the Parties by and through duly authorized representatives, all by Resolution of their governing board and spread across their minutes, as of the date first above written.

ATTEST:

CITY OF DURHAM

City Clerk

By: _____

City Manager

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.

Finance Officer, Durham

TOWN OF CHAPEL HILL

ATTEST:

Town Clerk

By: _____

Town Manager

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.

Finance Officer, Chapel Hill

Approved as to form and legal sufficiency:

Town Attorney, Chapel Hill

RESEARCH TRIANGLE REGIONAL PUBLIC
TRANSPORTATION AUTHORITY

ATTEST:

Clerk

By: _____
Chair, Board of Trustees

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.

Chief Finance Officer, Research Triangle Regional Public
Transportation Authority

Approved as to form and legal sufficiency:

General Counsel of
Research Triangle Regional Public
Transportation Authority